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## DAVIS v. ALDERSON.

Sept. 17, 1919.

[100 S. E. 541.]

**1. Specific Performance (§ 18\*)—Unprofitable Bargain No Defense.**

—The mere fact that a party has made a bad trade or unprofitable bargain will not relieve him of specific performance.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 523.]

**2. Evidence (§ 505\*)—Testimony of Physician Opinion Evidence.**

—Testimony by physicians that, if defendant who sued for specific performance purchased the land with expectation of paying for it, he must have been irresponsible for his acts in some way, which did not go to the length of saying that defendant was insane, is not expert testimony, but mere opinion, and should have been excluded, though the defense was that defendant was temporarily insane when he made the contract.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 791.]

**3. Evidence (§§ 474 (4), 568 (2\*))—Weight of Testimony of Lay Witness as to Sanity.**—Testimony of lay witness as to sanity or insanity of a person is admissible in evidence, where it appears the witness had sufficient opportunity by observation to form an opinion worth considering, and usually such testimony, where general sanity is not involved, is not esteemed of much value except so far as the opinion of witness is justified by data observed.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 799.]

**4. Evidence (§ 14\*)—Judicial Notice That Men Older Than 62 Occupy Important Positions.**—The courts will take judicial notice that men of greater age than 62 occupy important governmental and judicial positions, so as to rebut the claim of defendant, who on being sued for specific performance claimed that he was temporarily insane when he made the contract and urged his advanced age of 62 in support of his contention.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 631.]

**5. Vendor and Purchaser (§ 44\*)—Evidence Insufficient to Show Temporary Insanity of Vendee.**—In a suit for specific performance of land sale contract where defendant claimed he was temporarily insane when he made the contract, evidence held insufficient to show any such insanity.**6. Evidence (§ 63\*)—Presumption of Sanity.**—Every person is presumed to be sane until the contrary is made to appear.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 680.]

**7. Vendor and Purchaser (§ 85\*)—Evidence Insufficient to Show Release of Vendee.**—In a suit to compel specific performance of de-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

fendant's contract to purchase land, evidence held insufficient to show any release by complainant.

**8. Specific Performance (§ 116½\*)—Refusal to Allow Filing of Supplemental Answer.**—In suit for specific performance of a contract to purchase land where the land was sold on default of the defendant purchaser and bought in by the vendor for \$1 more than the agreed price, held that, where the vendor was awarded a balance for accruing interest, defendant was not on report of the sale entitled to file a supplemental answer setting up the vendor's possession of land from the time of contract to suit, for notwithstanding Act March 27, 1914 (Laws 1914, c. 331), giving the right of amendment at every stage of proceeding, parties cannot be allowed to try their case piecemeal.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 49.]

**9. Specific Performance (§ 130\*)—Allowance to Vendee of Value of Use of Land by Vendor.**—Under the maxim he who seeks equity must do equity, a vendor, seeking specific performance of a contract of the sale of land, who remained in possession from the time of making of contract, etc., until it was judicially sold on default of the purchaser, etc., must account to the purchaser for any profit from occupation as against vendor's claims for interest on the purchase money.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 692.]

Appeal from Circuit Court, Dickenson County.

Suit by Mrs. Alderson against one Davis. From a decree for complainant, defendant appeals. Amended and remanded.

*Chase & McCoy*, of Clintwood, and *W. A. Daugherty*, of Grundy, for appellant.

*A. A. Skeen*, of Clintwood, and *C. C. Burns*, of Lebanon, for appellee.

BUCHANAN COUNTY et al. v. W. M. RITTER LUMBER CO.

Sept. 17, 1919.

[100 S. E. 546.]

**1. Taxation (§ 378 (3)\*)—Property of Corporation Constituting Capital Taxable as Such.**—Felled timber, railroad ties, and manufactured lumber, belonging to lumber manufacturing corporation, constitutes "capital" of the corporation, and is properly taxable as such.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 964.]

**2. Taxation (§ 378 (3)\*)—Band Saw Mills Taxable as Capital of Corporation.**—Band saw mills not permanently attached to the land, but located thereon for the purpose and with the intention of being

\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.